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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/638,215

08/07/2003

Rebecca Gottlieb

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23392 7590 12/23/2009

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EXAMINER

GRAY, PHILLIP A

ART UNIT

PAPER NUMBER

3767

MAIL DATE

DELIVERY MODE

12/23/2009

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/638,215	<b>Applicant(s)</b> GOTTLIEB ET AL.	
	<b>Examiner</b> Phillip Gray	<b>Art Unit</b> 3767	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 07 October 2009.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-23 and 49-67 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-23 and 49-67 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>6/7/2009</u> .  | 6) <input type="checkbox"/> Other: _____                          |

### **DETAILED ACTION**

This Office Action is in response to applicant's communication of 10/7/2009.  
Currently amended claims 1-23 and 49-67 are pending and rejected.

#### ***Response to Arguments***

Applicant's arguments filed 10/7/2009 have been fully considered but they are not persuasive. In regards to the claim language concerning the location of the catheter, stent and sensor and how the sensor goes through each of the opening ends of the catheter and stent, examiner is using reference Lafontaine to teach a stent delivery balloon catheter and this method/device which has a sensor which extends through the catheter and stent. (see rejection below).

#### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was

not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 1-11,14-23 and 49-67 are rejected under 35 U.S.C. 103(a) as being unpatentable over Barry (U.S. Patent Application Number US2002/0077592 A1) in view of Lafontaine et al. (U.S. Patent 5,665,103). Barry discloses a replenishable stent and drug delivery system (see figures 1-16 and paragraphs at [0002]-[0048] generally, specific embodiments at [0067]-[0097]). Barry discloses a method for mitigating restenosis at a trauma site (where a stent is located) within the vasculature comprising: positioning a balloon catheter adjacent, interior to the stent, before or after a stent procedure, at a trauma site; and extending a sensor through a lumen in the catheter and through the stent (see element 255 and figures 11,13-15); and delivering a restenosis mitigating drug through apertures in the balloon catheter, upstream to the trauma site. The Barry sensor (255) sensing element is located on one side of and is spaced from the stent (as in figure 13) and the outlet of the catheter is located on the opposite side of the stent at which the sensing element is located, so that the stent is between the outlet and sensor.

Barry discloses the balloon catheter abuts a wall of the vasculature at the trauma site after the balloon catheter is expanded and also adjusting the flow rate and dispersal pattern of the restenosis mitigating drug. Barry further discloses using a restenosis mitigating agent or drug, which would include the use of insulin, nitric oxide, antibody, steroid , interleukin, blood thinner, ect. (see paragraph [0075]).

Barry discloses the claimed invention except for the step of extending the sensor “through the stent to a position located outside of the catheter and outside of the stent” (as added in the applicant’s most recent amendments) and through the first and second ends of the stent and through the catheter. Lafontaine et al. teaches that it is known to use the step of extending the sensor through the stent to a position located outside of the catheter and outside of the stent (see Lafontaine figure 1b, 3-4) as set forth in paragraphs beginning at column 6-8, to provide the surgeon a measurement of where the stent is located within the vasculature and in reference to the stent on a low profile device. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the method as taught by Barry with the step of extending the sensor “through the stent to a position located outside of the catheter and outside of the stent” (and as claimed in added claims 62-67) as taught by Lafontaine, since such a modification would provide the method with the step of extending the sensor “through the stent (both ends) to a position located outside of the catheter and outside of the stent” for providing the surgeon a measurement of where the stent is within the vasculature on a low profile device. See marked up figure below.

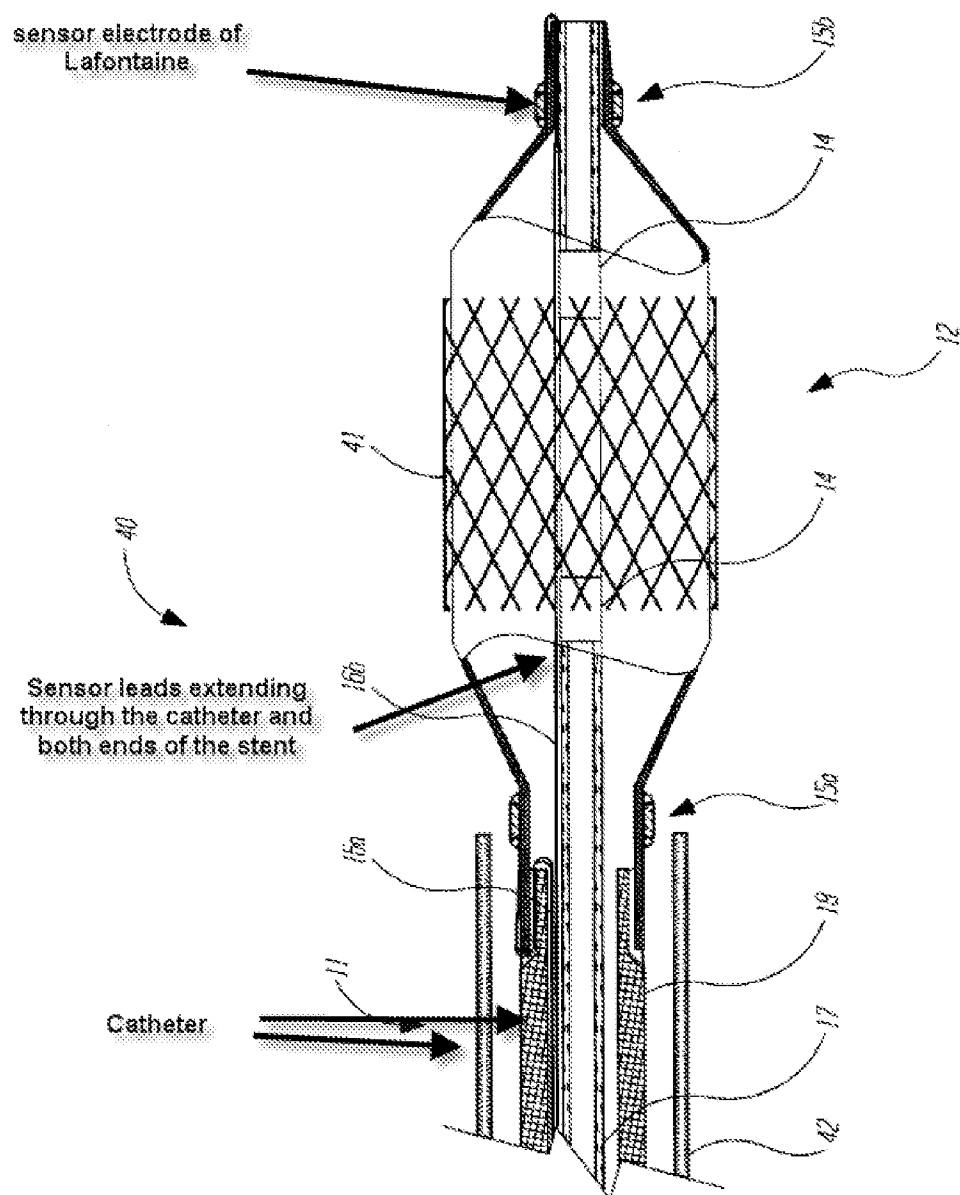


FIGURE 4

Claims 12-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Barry in view Lafontaine in further view of Silver (U.S. Patent Number 6,442,413). Silver discloses an implantable glucose sensor that can be used for implantation in a blood vessel.

Barry in view Lafontaine discloses the claimed invention of a method for mitigating restenosis at a trauma site at which a stent and catheter and sensor are located except for the sensor sensing analyte or glucose. Silver teaches that it is known to use a method where the delivery of the restenosis mitigating drug is modified in response to the sensing of analyte by a sensor as set forth beginning at paragraphs at column 6 line 65 to provide a means to monitor and control glucose levels in the environment. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the method as taught by Barry in view Lafontaine with delivery of the restenosis mitigating drug is modified in response to the sensing of analyte by a sensor as taught by Silver since such a modification would provide the method to treat restenosis with a sensor for sensing analyte for providing a means to monitor and control glucose levels in the environment.

Claims 4, 19-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Barry in view Lafontaine. Barry in view Lafontaine discloses the claimed invention except for the specific mention of using the specific drugs. Examiner believes these drugs to be implicitly stated in the Barry in view Lafontaine reference and thus an appropriate rejection. However if not directly disclosed in Barry in view Lafontaine, they are obvious. It would have been obvious to one having ordinary skill in the art at the

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time the invention was made to use a restenosis mitigating drug of insulin, nitric oxide, antibody, steroid, interleukin, blood thinner, ect, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 227 F.2d 197, 125 USPQ 416 (CCPA 1960).

### **Conclusion**

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Phillip Gray whose telephone number is (571)272-7180. The examiner can normally be reached on Monday through Friday, 8:30 a.m. to 4:30 p.m. EST.



If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin Sirmons can be reached on (571) 272-4965. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Phillip Gray/  
Examiner, Art Unit 3767  
/Kevin C. Sirmons/  
Supervisory Patent Examiner, Art Unit 3767